

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs December 20, 2006 at Knoxville

STATE OF TENNESSEE v. SKYLAR MONTRELL HULLOM

Appeal from the Criminal Court for Davidson County
No. 2005-B-1353 Monte Watkins, Judge

No. M2006-01041-CCA-R3-CD - Filed April 19, 2007

A Davidson County Criminal Court jury convicted the defendant, Skylar Montrell Hullom, of aggravated assault, and the court sentenced him to four years' probation with periodic confinement. On appeal, he claims that the trial court erred in admitting photographs of the victim's injury and bloody clothing, and he challenges the sufficiency of the convicting evidence. We hold that the trial court did not abuse its discretion in admitting the photographs, and because the record supports the jury's verdict, we affirm the conviction.

Tenn. R. App. P. 3; Judgment of the Criminal Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J. and DAVID H. WELLES, J., joined.

Ross E. Alderman, District Public Defender; Jeffrey A. DeVasher, Assistant District Public Defender (on appeal); and Jennifer Booth and Virginia Flack, Assistant District Public Defenders (at trial), for the Appellant, Skylar Montrell Hullom.

Robert E. Cooper, Jr., Attorney General & Reporter; Benjamin A. Ball, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Russell Thomas, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The evidence at trial, viewed in the light most favorable to the State, showed that on September 19, 2004, the victim, Stephanie Negron, her sister, Natalie Negron, and her friend, Natasha Grimes, patronized Hurricanes, a night club on Second Avenue in Nashville, at approximately midnight. They neither met other friends there nor saw anyone else they knew. The victim stated that shortly after she and her party arrived, the defendant, who was not previously acquainted with the victim, "put his hand on [her] thigh, leg area." She instructed the defendant not to touch her, and he "cursed [her] out." Natalie Negron stepped between the two, and the victim

stated that the defendant moved toward her sister “like he wanted to hit [her].” She further testified, “[S]ome guys, I don’t know who they were, but they grabbed [the defendant] and took him away.”

Approximately ten minutes later, Natalie Negron informed the victim that the defendant was again approaching and that they should leave. According to the victim, the defendant smiled and then hit her in the face with a beer bottle. The victim fell to the ground and was “out for . . . a split second.” She began to bleed from a laceration over her left eye, and her clothing became soaked with blood. At that point, the night club’s security personnel escorted the victim, Natalie Negron, Ms. Grimes, and the defendant outside where police officers arrested the defendant after conducting an investigation. The victim then went to Summit Medical Center where she received 13 stitches. Later that day, she went to a different hospital and received treatment for a concussion. The victim testified that the injury caused her pain, necessitating narcotics to ease the pain, and she now has a permanent scar on her face.

Natalie Negron testified to the same events, stating that her view was not obstructed when the defendant hit her sister with the bottle. She testified that the defendant wore a black shirt with white pin stripes over another black shirt and blue jeans. When she identified the defendant to police officers outside of the night club, the defendant had taken off the pin-striped shirt. She also described the victim’s injury as a “very big gash, a very big cut” over the victim’s left eye which bled “profusely.”

Metropolitan Nashville Police Department Officer Brent Fisher, one of the officers who responded to the scene, testified that when he arrived, he observed the victim standing in the roadway crying. He saw the laceration above her left eye and the blood on her clothing. Officer Fisher interviewed Natalie Negron, Ms. Grimes, and the night club’s security personnel. He neither took their formal statements nor inspected the inside of the night club. He testified that the area where the incident occurred had been cleaned; the bottle had been removed. As a result of his investigation, he arrested the defendant at the scene.

The defendant testified on his own behalf that he met friends at Hurricanes night club. He stated that 15 minutes after arriving, he was leaving the dance floor with a friend when he “accidentally . . . bumped into [the victim],” whom he had never met. The defendant testified that the victim told him not to touch her, that another man, who was with the victim, grabbed his arm, and that the victim then hit him in the face. He testified that he then fought with the man who grabbed his arm and two other men, who were also acquaintances of the victim. During the fight, which he stated lasted for two minutes, the defendant was unaware of the victim’s whereabouts. Only when the security guard accused him of hitting the victim with a bottle as the security guard escorted him outside did he learn that the victim had been injured.

The defendant denied ever having a bottle in his hand, stating that he only held “[a] lady and a Black Malva [cigar].” Once outside, he was identified to the police officer and subsequently arrested. He stated that his friends never spoke with police officers.

The jury convicted the defendant of aggravated assault, *see* T.C.A. § 39-13-102(a)(1)(B) (2006) (stating that an assault is aggravated when a person “[i]ntentionally or knowingly commits an assault as defined in § 39-13-101 and . . . uses or displays a deadly weapon”), and the defendant filed a timely notice of appeal challenging the admission of three photographs and the sufficiency of the convicting evidence.

First, the defendant argues that the trial court committed reversible error in admitting the photographs of the victim’s stitched laceration, her bloody blue jeans, and her bloody bra. He contends that the photographs were not relevant to any contested issue at trial because “[a]t no time did [he] seek to contest the manner in which the victim was injured, or anything else depicted in the photographs.” The defendant argues that the photographs were admitted solely to inflame the jury. In addition, he claims that even if the photographs were relevant, they were too prejudicial.

To be admissible, a photograph must be relevant to some issue at trial, and the prejudicial effect of the photograph must not outweigh its probative value. *State v. Bush*, 942 S.W.2d 489, 514 (Tenn. 1997); *State v. Banks*, 564 S.W.2d 947, 951 (Tenn. 1978); *see also* Tenn. R. Evid. 401 (defining relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence); Tenn. R. Evid. 403 (stating that “relevant[] evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice). The admissibility of photographs is within the sound discretion of the trial court, and the court’s determination will not be overturned on appeal except upon a clear showing of an abuse of discretion. *Bush*, 942 S.W.2d at 514; *State v. Bordis*, 905 S.W.2d 214, 226 (Tenn. Crim. App. 1995). Moreover, an abuse of discretion is only present when the trial court “applied an incorrect legal standard, or reached a decision which is against logic or reasoning that caused an injustice to the party complaining.” *State v. Shuck*, 953 S.W.2d 662, 669 (Tenn. 1997).

In addition, “[a]n accused cannot marshal the evidence of the state by simply offering to stipulate to a fact for the purpose of barring the state from introducing admissible, demonstrative evidence the accused does not want the jury to see.” *State v. Griffis*, 964 S.W.2d 577, 595 (Tenn. Crim. App. 1997); *see also State v. West*, 767 S.W.2d 387, 394 (Tenn. 1989) (holding that the trial judge did not err by refusing to accept defendant’s offer to stipulate the identity of all property when the defendant made the offer in an effort to eliminate highly emotional and prejudicial testimony).

In admitting the three photographs, the trial court stated, regarding aggravated assault’s bodily injury element, that “oftentimes, jurors unless they see photographs, they don’t believe bodily injury occurred.” As the court discerned, the photographs of the injury and the bloody clothing were relevant because they have a tendency to show that bodily injury occurred, and their probative value was not substantially outweighed by the danger of unfair prejudice. Moreover, the defendant cannot bar their admittance by stipulating to the victim’s injury. Therefore, we hold that the trial court did not abuse its discretion in admitting the photographs.

Second, the defendant argues that the evidence is insufficient to support the guilty verdict. Specifically, the defendant claims the evidence raises a reasonable doubt regarding identity, contending that neither the victim nor Natalie Negron had seen the defendant previously, that immediately after the assault the defendant was wearing a different shirt than the perpetrator, that neither the victim nor Natalie Negron participated in “police-generated objective pretrial identification procedure,” and that no “disinterested witnesses” identified the defendant as the perpetrator.

When an accused challenges the sufficiency of the evidence, an appellate court’s standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979); *State v. Winters*, 137 S.W.3d 641, 654 (Tenn. Crim. App. 2003). The rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *Winters*, 137 S.W.3d at 654.

In determining the sufficiency of the evidence, this court should neither re-weigh the evidence nor substitute its inferences for those drawn by the trier of fact. *Id.* at 655. Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Significantly, this court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Id.*

As relevant to this case, Tennessee Code Annotated section 39-13-101 provides that a person commits the offense of assault who “[i]ntentionally, knowingly, or recklessly causes bodily injury to another.” T.C.A. § 39-13-101(a)(2) (2006). An assault is graded as “aggravated” when a person “[i]ntentionally or knowingly commits an assault as defined in § 39-13-101 and . . . uses or displays a deadly weapon.” *Id.* § 39-13-102(a)(1)(B).

Here, the evidence established that although the victim and Natalie Negron had not met the defendant prior to September 19, 2004, they identified him as the perpetrator of the aggravated assault. Natalie Negron also testified that the defendant wore a pin-striped shirt *over* a black shirt during the assault and that he must have removed the outer shirt because he wore only the black shirt when she specifically identified him to the police officer. In addition, although informally, Natalie Negron did positively identify the defendant to a police officer, who responded to the scene and investigated the incident.

Essentially, the identity of the perpetrator is a determination for the trier of fact. *See State v. Strickland*, 885 S.W.2d 85, 87-88 (Tenn. Crim. App. 1993) (question of identity is issue of fact for jury’s determination; testimony of victim alone is sufficient to support a conviction). In reviewing the sufficiency of the convicting evidence, we neither resolve credibility issues, make inferences, nor usurp the jury’s factual determinations. Our role is to determine whether the

evidence, in the light most favorable to the State, factually establishes the elements of the conviction offense. We hold that the evidence in this case is sufficient to support the conviction of aggravated assault.

For the foregoing reasons, we affirm the judgment of the trial court.

JAMES CURWOOD WITT, JR., JUDGE